

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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April 21, 2006

Sherry Gentry
Deputy Labor Commissioner
Division of Labor Standards Enforcement
5555 California Avenue, Suite 200
Bakersfield, CA 93309

Re: Public Works Case No. 2005-009
The Hauling of Biosolids from Orange County;
The Application of Hauled Biosolids on Farmland in Kern and
Kings Counties

Dear Ms. Gentry:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the hauling of biosolids from a water treatment facility and the application of the hauled biosolids to farmland as soil amendment is not public work subject to the payment of prevailing wages.

Facts

On January 10, 2000, Orange County Sanitation District ("District") entered into an agreement with Western Express, Inc. ("Western") and Shaen Magan doing business as Tule Ranch/Magan Farms dba Honey Bucket Farms (collectively, "Magan") for (1) the hauling of dewatered digested sewage solids ("biosolids") from District's water treatment facility in Orange County; and (2) the application of 230 tons of hauled biosolids per day to farmland at two locations, Tule Ranch/Magan Farms in Kern County (4,027 acres) and District-owned land in Kings County (1,200 acres).¹

The scope of work involves the following tasks: Western truckers haul the biosolids six days a week in tarped, watertight trucks from District's water treatment facility² to the farmland. The biosolids are then applied to the farmland as soil amendment by Magan's on-site farm crew in the following way. The biosolids are

¹The agreement was extended on the same terms by a first amended agreement dated January 1, 2003.

²The drivers do not load the trucks at the water treatment facility. That work is done by District employees.

transferred to an 8,000 gallon receiving tank for moisturizing and then transferred to an injection rig, which is pulled behind a farm tractor. The hydrated biosolids or sludge is injected into the soil to a depth of 6 inches at a rate of about 10 dry tons per acre. The sludge is then disked (mixed) into the soil using a disk harrow, which is also pulled behind a farm tractor.

District imposes significant conditions on Magan to avoid the direct exposure of the sludge to humans or animals in carrying out this work. Crops grown at both sites may not be used for human consumption, only for animal feed and other agricultural purposes. Magan is also required to undertake extensive recordkeeping, perform testing and inspection and manage the habitat.

Discussion

Labor Code³ section 1720(a)(1) defines public works as: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" Section 1720.3 states: "For the limited purposes of Article 2 (commencing with Section 1770), 'public works' also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." Section 1720(a)(2) also defines public works as: "Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. 'Public work' does not include the operation of the irrigation or drainage system of any irrigation or reclamation district"

There is no dispute that the subject work is done under contract and paid for out of public funds. The first issue is whether the application of the sludge to the soil meets the type of work element of a public work under section 1720(a)(1). The second issue is whether the hauling of biosolids is covered under section 1720.3. The final issue is whether any of the subject work is "[w]ork done for" a district under section 1720(a)(2).

As to the first issue, application of the sludge as soil amendment is not alteration within the meaning of section 1720(a)(1). "To 'alter' is merely to modify without changing into something else," and that term applies "to a changed condition of the surface or the below-surface." (*Priest v. Housing Authority* (1969) 275 Cal.App.2d 751, 756.) "Alter" as defined by Webster's Third New

³All further statutory references are to the Labor Code unless otherwise indicated.

International Dictionary (2002) at page 63 is "to cause to become different in some particular characteristic (as measure, dimension, course, arrangement or inclination) without changing into something else." Thus, with regard to land, under these definitions to alter under section 1720(a)(1) is to modify a particular characteristic of the land.

The application of sludge as soil amendment is not alteration because it does not modify any particular characteristic of the land. The land was a field used for farming prior to the application of the sludge. After application of the sludge, the land will not be noticeably different from before; it will still be a field used for farming. Once injected and disked, the sludge dissipates, leaving no lasting modification on the land. As such, the application of sludge as soil amendment is not alteration within the meaning of section 1720(a)(1).

As to the second issue concerning the hauling of the biosolids from District's existing water treatment facility, this facility is not a public works site. Because the biosolids is being hauled from a public facility and not a public works site, section 1720.3 does not apply. As noted by the Attorney General in determining whether the operation of a transfer station is public work:

Nor do we find section 1720.3 to be applicable. That statute deals with hauling refuse to a disposal location "from a public works site." The apparent intent of the Legislature in enacting section 1720.3 was to include within the definition of "public works" the hauling of any refuse that was part of the construction project ... Here, the trash transported to the county landfill is not the result of any "[c]onstruction, alteration, demolition, or repair work" (§ 1720, subd. (a)) at the transfer station. Hence, section 1720.3 is inapplicable to our facts.

(83 Ops.Cal.Atty.Gen. 166, 168-169 (2000).)

The remaining issue is whether section 1720(a)(2) requires that "work done for" a district be construction, alteration, demolition, installation or repair as set forth in section 1720(a)(1). Unlike section 1720(a)(1), section 1720(a)(2) does not enumerate any particular type of covered work.

Representatives of affected workers performing trucking in this matter take the position that any type of work performed under contract for a district is without limitation public work subject

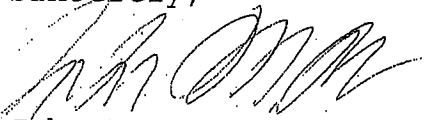
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to prevailing wages under section 1720(a)(2), relying in part on PW 2002-005, *Hauling and Disposal of Wastewater Materials, EBMUD Wastewater Treatment Plant* (July 1, 2002). Magan and the California Association of Sanitation Agencies take the opposite position that section 1720(a)(2) is limited to the types of work enumerated in section 1720(a)(1). Finding the reach of 1720(a)(2) to be unlimited in scope would be illogical and create prevailing wage obligations for any type of work performed under contract for a district regardless of the nature of that work. Given the general purpose of California Prevailing Wage Law "to benefit the construction worker on public construction," (*O.G. Sansone v. Department of Transportation* (1976) 55 Cal.App.3d 434, 461), the most reasonable way to define the scope of section 1720(a)(2) is to require that the work fall within one of the types of covered work enumerated in section 1720(a)(1). Here, while the hauling and application of the biosolids serves the beneficial purpose of reducing landfill waste, it is not an activity encompassed by section 1720(a)(1) and therefore is not covered work under section 1720(a)(2).⁴

The hauling of biosolids and the application of the hauled biosolids as hydrated sludge to farmland is not public work. It is therefore unnecessary to analyze the applicability of any other statutory provision with regard to testing, inspection and other incidental activities within the scope of work.

I hope this determination satisfactorily answers your inquiry.⁵

Sincerely,



John M. Rea
Acting Director

⁴Also, the hauling of biosolids and the application of the hauled biosolids on farmland is not a contract "let for maintenance work" under section 1771 because the hauling and application work does not involve "[r]outine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility" (Cal. Code Regs, tit. 8, § 16000.)

⁵PW 2002-005, *Hauling and Disposal of Wastewater Materials, EBMUD Wastewater Treatment Plant* (July 1, 2002) is de-designated as precedential. Accordingly, it will no longer be followed by the Director and should no longer be considered guidance by the regulated public after the date of this determination.